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**REAL ESTATE ACQUISITION AGREEMENT  
(De Soto Unified School District 232)**

THIS AGREEMENT ("**Agreement**") dated this \_\_\_\_ day of \_\_\_\_\_, 2000, by and between the **KANSAS STATEWIDE PROJECTS DEVELOPMENT CORPORATION**, a body politic and corporate and an independent instrumentality of the State of Kansas existing pursuant to Section to Section 74-8901 et seq., of the Kansas Statutes Annotated, as amended ("**KSPDC**"), **DE SOTO UNIFIED SCHOOL DISTRICT 232, JOHNSON COUNTY, STATE OF KANSAS**, a political subdivision of the State of Kansas ("**DISTRICT**"), and **THE OZ ENTERTAINMENT COMPANY**, a Delaware corporation ("**OEC**") (KSPDC, DISTRICT and OEC are sometimes hereinafter collectively referred to as the "**Parties**").

WHEREAS, the Sunflower Army Ammunition Plant, owned by the United States of America (the "**Government**"), is located on 9,065 acres, more or less, near the City of De Soto in Johnson County, Kansas; and

WHEREAS, pursuant to the terms of Section 484(e)(3)(H) of Title 40, United States Code, KSPDC proposes to enter into an agreement with the Government to acquire all right, title and interest in and to portions of the Sunflower Army Ammunition Plant (such portions are hereinafter referred to as the "**SFAAP**"); and

WHEREAS, immediately upon the acquisition of SFAAP, KSPDC will convey title to SFAAP to OEC for economic development purposes; and

WHEREAS, OEC has represented to DISTRICT that OEC intends to donate to DISTRICT certain property(ies) pursuant to the Property Identification Agreement (as hereinafter defined) which shall, upon donation, be benefited by the covenant set forth in Section 9620(h)(3) of Title 42, United States Code; and

WHEREAS, in connection with the disposition of the SFAAP, and upon application (the "**Transfer Application**") by DISTRICT to the U.S. Department of Education ("**DOE**"), a copy of which is attached hereto as Exhibit A, the DOE has either denied or only partially approved a transfer to DISTRICT of a public benefit conveyance consisting of certain real property and improvements contained within the SFAAP; and

WHEREAS, the donation by OEC of the right to receive certain property(ies) (the "**Property Exchange Rights**") to be identified pursuant to the identification protocol described in the Property Identification Agreement to be executed by the District and OEC in the form of Exhibit B attached hereto (the "**Property Identification Agreement**") to DISTRICT satisfies DISTRICT's need for real property which DISTRICT had sought pursuant to the Transfer Application; and

WHEREAS, but for the grant by OEC of the Property Exchange Rights to DISTRICT, DISTRICT would not release and relinquish its existing rights, if any, to acquire property located within the SFAAP; and

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WHEREAS, the Parties believe that the optimal use of portions of the SFAAP can be achieved, while at the same time DISTRICT can better accomplish its educational goals and missions, by executing and performing this Agreement; and

WHEREAS, the Parties acknowledge that any deed(s) from OEC, conveying DISTRICT property for which the DISTRICT has obtained a Property Exchange Right pursuant to the Property Identification Agreement, shall restrict DISTRICT's use of such property to the construction and operation of elementary, secondary and/or primary public schools thereon and ancillary facilities, and shall contain certain restrictions (the "**Deed Restrictions**"), the details of which appear in the quitclaim deed ("**Deed**") conforming in form and substance to Exhibit C.

WHEREAS, DISTRICT desires to reduce or eliminate any future expenses associated with the Transfer Application and the property(ies) to be conveyed hereunder; and

WHEREAS, in reliance on OEC's representations that OEC will donate to DISTRICT certain property(ies) pursuant to the Property Identification Agreement, DISTRICT will release and relinquish all rights, however remote or speculative, that KSU may have to receive property from the Government including all rights, if any, obtained pursuant to the Transfer Application; and

NOW, THEREFORE, relying on the representations set forth above, the Parties agree as follows:

1. **Incorporation of Recitals.** The recitals set forth above are hereby incorporated into and made a part of this Agreement.

2. **Limited Obligations of KSPDC and DISTRICT.** The parties agree that under no circumstances shall KSPDC assume responsibility or otherwise be responsible for any environmental remediation which may be required to be performed with respect to the SFAAP or any portion thereof. The parties further agree that DISTRICT does not assume responsibility for environmental remediation of existing contamination on, under or about the SFAAP and that DISTRICT shall not be responsible to KSPDC or OEC for any such remediation.

3. **Grant of Property Exchange Rights.** On the date that KSPDC obtains from the Government a conveyance of the SFAAP or the initial portion thereof, (i) KSPDC shall transfer to OEC the SFAAP or portions thereof (the "**First Closing**"), (ii) OEC shall grant to DISTRICT the right to receive real property or properties at the SFAAP, to be used for the construction and operation of elementary, secondary and/or primary public schools and ancillary facilities thereon (the "**Property Exchange Rights**"), which are identified from time to time in accordance with the procedures described in the Property Identification Agreement to be executed by the District and OEC concurrently herewith in the form of Exhibit D attached hereto, (iii) DISTRICT shall deliver a written release to OEC in the form of Exhibit E attached here (the "**DISTRICT RELEASE**") which shall conditionally release and relinquish any and all of its existing rights, if any, to receive property within the SFAAP, other than property for which the District obtains Property Exchange Rights pursuant to the Property Identification Agreement, and (iv) DISTRICT shall deliver a written notice in the form of Exhibit F attached hereto (the "**DOE**"),

**Notice**”) addressed to DOE which shall conditionally withdraw the Transfer Application that DISTRICT filed with the DOE effective upon the transfer of the Property to DISTRICT.

4. **Closing Date/Expiration Date.** KSPDC shall give not less than 10 business days prior written notice (the “**Notice of First Closing**”) to DISTRICT and OEC of the date that KSPDC is prepared to conduct the First Closing (the “**First Closing Date**”); provided, however, that the First Closing must occur within one hundred eighty (180) days after Congressional Approval (as such term is defined in that certain Memorandum of Agreement (the “**Conveyance Agreement**”) between the United States of America, acting by and through the General Services Administration and KSPDC for the Conveyance of Land and Transfer Property Comprising the Former Sunflower Army Ammunition Plant, Johnson County, Kansas, dated \_\_\_\_\_, 2000) (the “**Termination Option Date**”). If the First Closing Date does not occur by the Termination Option Date, this Agreement, at the option of KSPDC or DISTRICT, shall expire and this Agreement shall be null and void and DISTRICT shall not be deemed to have waived any rights DISTRICT might otherwise have under the Transfer Application. DISTRICT and OEC acknowledge that it is KSPDC’s intent that the First Closing Date occur on the same day on which KSPDC obtains a conveyance of the SFAAP (or any portion thereof) from the Government and, accordingly, if necessary the date set forth in the Notice of First Closing may be reasonably adjusted so that the First Closing hereunder coincides with any changes made to the First Closing Date for the transfer of the SFAAP to KSPDC. KSPDC shall provide prior written notice of any such adjustment to DISTRICT and OEC.

5. **Final Closing Date.** The Final Closing (hereinafter defined) shall occur within three hundred seventy (370) days following the date on which the covenant set forth in Section 9620(h)(3)(A)(ii) of Title 42, United States Code will apply to the Transfer Property (the “**Final Closing Date**”).

6. **Deliveries from District and OEC.** On the Final Closing Date OEC and DISTRICT shall each deliver to the other separately executed originals of the Property Identification Agreement (the “**Final Closing**”).

7. **Failure of Conditions.** In the event that the First Closing Date shall fail to occur by the Termination Option Date, and District or KSPDC elect to terminate this Agreement, then, it is understood and agreed that, District shall not be deemed to have released any of its rights to receive property at the SFAAP under the Transfer Application or otherwise.

8. **No Obligation to Acquire.** This Agreement shall not impose on KSPDC any obligation to acquire SFAAP or any portion thereof. Rather, this Agreement shall only obligate KSPDC to convey such property to OEC in the event KSPDC obtains a conveyance of such property from the Government. KSPDC shall retain absolute discretion as to whether, when or upon what terms it may acquire SFAAP or any portion thereof from the Government. OEC and DISTRICT agree that they will not in any event seek to compel KSPDC to acquire title to SFAAP or any portion thereof from the Government or seek any remedies against KSPDC for any failure of KSPDC to acquire the SFAAP.

9. **Covenants, Warranties and Representations of KSPDC.** KSPDC hereby represents, warrants and covenants, and DISTRICT and OEC do rely on the following representations, warranties and covenants as follows, all of which shall survive the Closing:

(a) KSPDC has authority under Kansas law to execute and perform this Agreement, and that this Agreement and its performance does not contravene or violate any other agreement, instrument, law, ordinance, court order, or governing instrument, or cause a default thereunder, which would materially impair the obligation of KSPDC hereunder.

(b) The individuals signing this Agreement and all other documents executed or to be executed pursuant hereto on behalf of KSPDC shall be authorized to sign the same on KSPDC's behalf and to bind KSPDC thereto.

(c) In the event that the First Closing Date shall fail to occur on or prior to the Termination Option Date, and DISTRICT or KSPDC elect to terminate this Agreement, DISTRICT's rights, if any, to receive property at the SFAAP pursuant to the Transfer Application are not intended to be prejudiced hereby; therefore, KSPDC will take no action which jeopardizes the rights, if any, of the District to receive property at the SFAAP and will take all reasonable actions requested by DISTRICT to affirm DISTRICT's existing rights, if any, to the extent approved under the Transfer Application.

10. **Covenants, Warranties and Representations of DISTRICT.** DISTRICT hereby covenants, warrants and represents to KSPDC and OEC as follows, and KSPDC and OEC do rely on the following covenants, warranties and representations:

(a) DISTRICT warrants that it has the authority to execute this Agreement and perform the terms hereof; that this Agreement and its performance does not contravene or violate any other agreement, instrument, law, ordinance, court order or governing instrument, or cause a default thereunder which would impair the obligations of DISTRICT hereunder.

(b) The individuals signing this Agreement and all other documents executed or to be executed pursuant hereto on behalf of DISTRICT shall be authorized to sign the same on DISTRICT's behalf and to bind DISTRICT thereto.

(c) Until the earlier of the expiration of this Agreement or the First Closing Date, DISTRICT agrees that it will not take further action to acquire other real property in the SFAAP.

(d) DISTRICT shall execute such documents as may be necessary and withdraw any applications (other than the Transfer Application) or back-up applications that may be pending for property at SFAAP and will give notice to KSPDC and OEC of any matters affecting DISTRICT's rights or interests with respect to property at the SFAAP, the Transfer Application and DISTRICT's ability to withdraw the Transfer Application, of which DISTRICT has knowledge.

11. **Covenants, Warranties and Representations of OEC.** OEC hereby covenants, warrants and represents to KSPDC and DISTRICT as follows, and KSPDC and DISTRICT do rely on the following covenants, warranties and representations:

(a) OEC is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. OEC is duly qualified to do business and is in good standing as a foreign corporation in the State of Kansas.

(b) OEC has the corporate power, authority and legal right to execute, deliver and perform this Agreement and the Property Identification Agreement and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance of this Agreement and the Property Identification Agreement by OEC have been duly authorized by all necessary corporate and shareholder action. The execution and delivery of this Agreement and the Property Identification Agreement and the consummation of the transactions herein and therein contemplated will not contravene or violate the articles of incorporation or bylaws of OEC. This Agreement and the Property Identification Agreement have been, and the other agreements, documents and instruments required to be delivered by OEC in accordance with the provisions hereof will be, duly executed and delivered on behalf of OEC by duly authorized officers of OEC, and this Agreement, the Property Identification Agreement and any other documents to be delivered by OEC pursuant hereto will constitute the legal, valid and binding obligations of OEC, enforceable against OEC in accordance with their respective terms.

(c) The execution, delivery and performance of this Agreement and the Property Identification Agreement by OEC do not and will not violate, conflict with or result in the breach of any term, condition or provision of, or require the consent of any other person under, (i) any existing law, ordinance, or governmental rule or regulation to which OEC is subject, (ii) any judgment, order, writ, injunction, decree or award of any court, arbitrator or governmental or regulatory official, body or authority which is applicable to OEC, or (iii) the articles of incorporation or bylaws or any securities issued by OEC. No authorization, approval or consent of, and no registration or filing with, any governmental or regulatory official, body or authority is required in connection with the execution, delivery or performance of this Agreement or the Property Identification Agreement by OEC.

(d) OEC has complied with each, and is not in violation of any, law, ordinance, or governmental or regulatory rule or regulation, whether federal, state, local or foreign, to which OEC's business, operations, assets or properties is subject ("**Regulations**"). OEC owns, holds, possesses or lawfully uses in the operation of its business all franchises, licenses, permits, easements, rights, applications, filings, registrations and other authorizations ("**Authorizations**") which are in any manner necessary for it to conduct its business as now or previously conducted or for the ownership and use of the assets owned or used by OEC in the conduct of the business of OEC, free and clear of all restrictions and in compliance with all Regulations. OEC is not in default, nor has it received any notice of any claim of default, with respect to any

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Authorization. None of such Authorizations will be adversely affected by the consummation of the transactions contemplated hereby.

(e) Except as otherwise disclosed on Schedule 11(e) hereto, no litigation, including any arbitration, investigation or other proceeding of or before any court, arbitrator or governmental or regulatory official, body or authority is pending or, to the best knowledge of OEC, threatened against OEC or which relates to the assets of OEC or the transactions contemplated by this Agreement (including the Property Identification Agreement), nor does OEC know of any reasonably likely basis for any such litigation, arbitration, investigation or proceeding, the result of which could adversely affect OEC, its assets or the transactions contemplated hereby. OEC is not a party to or subject to the provisions of any judgment, order, writ, injunction, decree or award of any court, arbitrator or governmental or regulatory official, body or authority which may adversely affect OEC, its assets or the transactions contemplated hereby.

(f) It is anticipated that the Kansas Department of Health and Environment (“**KDHE**”) will, as a condition of the approval by the Governor of the State of Kansas of the early transfer of SFAAP pursuant to 42 U.S.C. 9620(h)(3)(C), impose a compliance order of consent (the “**Consent Order**”) upon OEC, a copy of which is attached hereto on Schedule 11(f) and incorporated herein by reference. OEC will obtain title to the SFAAP from KSPDC and will be required to comply with all terms and conditions of the Consent Order. It is anticipated that the Consent Order will require all necessary remediation of contamination of SFAAP, including upon any property identified pursuant to the Property Identification Agreement and conveyed to the District. As a signatory to this Agreement, OEC acknowledges its obligation to satisfy KDHE with respect to remediation of any property identified pursuant to the Property Identification Agreement and conveyed to the DISTRICT and acknowledges the right and authority of the DISTRICT to enforce the achievement of remediation to a standard required by KDHE for the uses contemplated by this Agreement.

(g) OEC will perform all acts required of it in this Agreement and the Consent Order and in the Property Identification Agreement in good faith and with all deliberate speed, performing such other acts which may be reasonably necessary to carry out the spirit and intention of this Agreement and the Consent Order and of the Property Identification Agreement.

(h) In the event that the First Closing Date shall fail to occur on or prior to the Termination Option Date, and the DISTRICT or KSPDC elect to terminate this Agreement, the DISTRICT’s rights, if any, to receive property at the SFAAP pursuant to the Transfer Application are not intended to be prejudiced hereby; therefore, OEC will not take any action which jeopardizes the rights, if any, of the DISTRICT to receive property at the SFAAP and will take all reasonable actions requested by the DISTRICT to affirm the DISTRICT’s existing rights, if any, to the extent approved under the Transfer Application.

12. **Indemnification by OEC.**

(a) ***Indemnification.***

(i) ***Indemnification of KSPDC.*** OEC, for itself and its successors and assigns (hereinafter defined), does hereby agree to indemnify and hold harmless KSPDC and the officials, board members, officers, agents, attorneys, independent contractors and employees thereof (each, a “**KSPDC Indemnified Party**”), from any and all loss, costs, claims, damages, or liability (including but not limited to all reasonable attorneys’ fees and litigation costs) incurred or sustained by a KSPDC Indemnified Party as a result of, or in any way related to or in defense of, any claims asserted against the KSPDC Indemnified Party based upon (A) KSPDC’s execution of and performance under the terms of this Agreement, or (B) any breach or violations by OEC of any of the terms and provisions of this Agreement or of the Property Identification Agreement, including but not limited to, any breach by OEC of any of its covenants, warranties and representations in this Agreement, unless such losses, costs, claims, damages or liability are incurred or sustained as a result of the gross negligence or willful misconduct of the KSPDC Indemnified Party.

(ii) ***Indemnification of the DISTRICT.*** OEC, for itself and its successors and assigns (hereinafter defined), does hereby agree to indemnify and hold harmless DISTRICT and the officials, board members, officers, agents, attorneys, independent contractors and employees thereof (each, a “**DISTRICT Indemnified Party**”), from any and all loss, costs, claims, damages, or liability (including but not limited to reasonable attorneys’ fees and litigation costs) incurred or sustained by a DISTRICT Indemnified Party as a result of, or in any way related to or in defense of (A) any claims asserted against the DISTRICT Indemnified Party based upon environmental liability arising as a result of environmental conditions on, under, or about the property identified pursuant to the Property Identification Agreement and transferred by OEC to the DISTRICT or the SFAAP at the time of its transfer to DISTRICT, but only to the extent such environmental conditions exist on such property on the date of such transfer and only to the extent that OEC or its successors and assigns have obtained one or more insurance policies which provide coverage for such environmental liability (i.e., OEC shall have no personal liability whatsoever pursuant to this Section 12(a)(ii) and furthermore, OEC shall have no obligation to indemnify DISTRICT beyond its receipt of insurance proceeds for such environmental liability); or (B) any breach or violations by OEC of any of the terms and provisions of this Agreement or of the Property Identification Agreement, including but not limited to, any breach by OEC of any covenant, warranty or representation in this Agreement, unless such losses, costs, claims, damages or liability are incurred or sustained as a result of the gross negligence or willful misconduct of the DISTRICT Indemnified Party.

(b) ***Notice by Indemnified Party.*** In the event that any claims asserted against a KSPDC Indemnified Party or DISTRICT Indemnified Party (an “**Indemnified Party**”)

which are alleged by such party to be covered by the undertaking of OEC hereunder shall arise:

(i) The Indemnified Party shall promptly notify OEC of the assertion of any claim. Further, the Indemnified Party and its counsel shall cooperate with OEC and its counsel in the defense of any such matter.

(ii) Provided OEC has satisfied the provisions herein and provided, further, that OEC is not otherwise in default of any provision of this Agreement or the Property Identification Agreement or any other related agreement which default is material or is otherwise directly related to the claim, the Indemnified Party shall not enter into any settlement of such claims without first (i) notifying OEC of such proposed settlement and (ii) obtaining OEC's approval of the same. In the event that the Indemnified Party shall settle any such claim without the approval of OEC, any financial consideration paid or liability undertaken or assumed in any such settlement shall not be the responsibility of OEC hereunder so long as: (A) OEC had promptly advised the Indemnified Party in writing that OEC was prepared to pay for the defense of such claims pursuant to Section 11(a) above; (B) OEC has sufficient financial resources, or has deposited sufficient reserves or security with the Indemnified Party to fulfill its obligations to indemnify and hold harmless the Indemnified Party hereunder; and (C) OEC was proceeding or evidenced its intent to proceed in good faith to contest such claim in accordance with its responsibilities hereunder.

(c) ***Term of Indemnification Obligation.*** KSPDC, District and OEC agree that the indemnification by OEC of the Indemnified Parties pursuant to this Agreement shall cover any claims asserted within a period of twenty (20) years from the date of the Final Closing hereunder, but such indemnification shall be extinguished and made null and void thereafter.

(d) ***Waiver of Claims Against Indemnified Parties.*** OEC on its behalf, and on behalf of its successors and assigns, does hereby waive any and all claims against the Indemnified Parties related to any losses, costs, claims, damages or liabilities (including but not limited to reasonable attorneys' fees and litigation costs) incurred or sustained by OEC by reason of any action or event (i) described in 11(a) above; (ii) arising out of the execution and performance of this Agreement or the Property Identification Agreement, or (iii) arising out of the conveyance by OEC to DISTRICT of any real property located within the SFAAP pursuant to the terms of this Agreement and the Property Identification Agreement, unless such losses, costs, claims, charges or liabilities are incurred or sustained as a result of the gross negligence or willful misconduct of the Indemnified Party.

(e) ***"OEC and its Successors and Assigns."*** For purposes of this Section 11, the phrase "OEC and its successors and assigns" shall mean OEC, any entity owned or controlled, directly or indirectly, by or affiliated with OEC and any other entity, whether or not owned or controlled or affiliated, directly or indirectly, by or with OEC which shall own all or any portion of the SFAAP or operate any facilities thereon.



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13. **Insurance.** OEC shall maintain policies of insurance in the form attached hereto as Schedule 13 for a period of twenty (20) years. OEC shall require that DISTRICT be named as an additional insured in such policies.

14. **As Is.** DISTRICT agrees and acknowledges that any property transferred hereunder is being transferred "AS IS, WHERE IS" with all faults and without representation or warranty with respect to physical or environmental condition, merchantability or fitness for a particular purpose and without any other warranty or representation whatsoever by OEC, except as specifically provided herein.

15. **Notices.** Any notice or other communication to be given under this Agreement shall be in writing and may be given by hand delivery, or by United States certified or registered mail, by telegram or telex or by facsimile or overnight courier. Any notice shall be effective, if sent by mail, two days after deposit in the mail as aforesaid, if sent by telex, when sent and the appropriate answerback is received, and in all other cases when received. Notices shall be addressed as follows:

If to KSPDC:

Mr. Kenneth Frahm, President  
Kansas Statewide Projects  
Development Corporation  
Jayhawk Tower, Suite 1000  
700 Southwest Jackson  
Topeka, KS 66603-3761  
Facsimile: (785) 296-6810

with a copy to:

Joel W. VanderVeen, Esq.  
Kutak Rock  
The Omaha Building  
1650 Farnam Street  
Omaha, NE 68102-2186  
Facsimile: (402) 346-1148

If to DISTRICT:

De Soto Unified School  
District 232  
Education Center  
8305 Peoria Street  
Post Office Box 449  
De Soto, KS 66018-0449  
Attention: \_\_\_\_\_

If to OEC:

The OZ Entertainment Company  
11845 Olympic Boulevard, Suite 695  
Los Angeles, CA 90064

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with a copy to:

Polsinelli White Vardeman & Shalton  
Attn: Scott Young  
700 West 47<sup>th</sup> Street, Suite 1000  
Kansas City, MO 64112

16. **In General.**

(a) **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the internal laws, and not the choice of laws, of the State of Kansas.

(b) **Jurisdiction and Venue.** This Agreement shall be enforced in the U.S. Federal District Court for the District of Kansas or in the Johnson County, Kansas District Court.

(c) **Entire Agreement.** This Agreement (including the Exhibits hereto) constitutes the entire Agreement between the Parties governing the subject matter hereof, and supersedes any and all written and oral agreements previously agreed to covering the subject matter hereof. This Agreement may be amended only by a further written instrument signed by the Parties hereto. Neither this Agreement nor any Exhibits hereto shall create any rights of any third party and this Agreement may be amended by the Parties without liability to any third party.

(d) **Assignment.** This Agreement may not be assigned by any party hereto without the prior written consent of the other Parties; provided that this Agreement may be assigned at any time by KSPDC to a non-profit corporate subsidiary of KSPDC established pursuant to Section 74-8904(v) of the Kansas Statutes Annotated, as heretofore or hereafter amended. The obligation of OEC to indemnify KSPDC and the DISTRICT under Section 12 hereof may not be assigned at any time by OEC without the prior written consent of KSPDC and the DISTRICT. Subject to the foregoing, all of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the successors and assigns of KSPDC, the DISTRICT and OEC.

(e) **Section Headings.** The paragraph titles are used herein for informational purposes only, and do not alter the substantive meaning of the terms of the paragraphs.

(f) **Terms.** The terms of this Agreement shall be liberally construed in order to accomplish the intent of the Parties and the spirit of the Agreement.

(g) **Gender.** Wherever necessary herein, the singular imparts the plural and vice versa, and the masculine, feminine and neuter expressions shall be interchangeable.

(h) **Successors.** This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties hereto.

(i) **Unenforceability.** If any provision of this Agreement is deemed unenforceable, such provision shall be narrowed in scope in order to make it enforceable; and if such provision cannot be narrowed in scope to make it enforceable, it shall be

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stricken from this Agreement, but the remaining terms of this Agreement shall be enforced.

(j) ***Waiver.*** No waiver shall be binding upon a party unless signed by the party to be bound by the waiver and such waiver shall be narrowly construed rather than being construed as a continuous and ongoing waiver.

(k) ***Enforcement.*** Legal fees and court costs shall be awarded to the prevailing party in any action which enforces the terms of this Agreement.

(l) ***Timeliness.*** Time is of the essence of this Agreement.

(m) ***Counterparts.*** This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same document.

IN WITNESS WHEREOF, the Parties hereto have set their hands and seals as of the date first set forth above.

DE SOTO UNIFIED SCHOOL DISTRICT 232

By: \_\_\_\_\_  
Its: \_\_\_\_\_

KANSAS STATEWIDE PROJECTS  
DEVELOPMENT CORPORATION

By: \_\_\_\_\_  
Kenneth Frahm  
President

THE OZ ENTERTAINMENT COMPANY

By: \_\_\_\_\_  
Robert B. Kory  
Chairman, Board of Directors/Chief Executive  
Officer

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**LIST OF EXHIBITS**

Exhibit A	DISTRICT Transfer Application to DOE
Exhibit B	Property Identification Agreement
Exhibit C	Deed
Exhibit D	Property Exchange Rights
Exhibit E	DISTRICT Release
Exhibit F	DISTRICT Notice to DOE
Schedule 11(e)	Litigation
Schedule 11(f)	Consent Order
Schedule 13	Insurance

**EXHIBIT A**  
**DISTRICT TRANSFER APPLICATION TO DOE**

**EXHIBIT B**  
**PROPERTY IDENTIFICATION AGREEMENT**

THIS AGREEMENT ("**Agreement**") dated this \_\_\_\_ day of \_\_\_\_\_, 2000, by and between DE SOTO UNIFIED SCHOOL DISTRICT 232, JOHNSON COUNTY, STATE OF KANSAS, a political subdivision of the State of Kansas ("**DISTRICT**"), and THE OZ ENTERTAINMENT COMPANY, a Delaware corporation ("**OEC**") (DISTRICT and OEC are sometimes hereinafter collectively referred to as the "**Parties**").

WHEREAS, the Parties have entered into a Real Estate Acquisition Agreement, dated \_\_\_\_\_, 2000 (the "**Real Estate Acquisition Agreement**"), pursuant to which the District has agreed to withdraw an application (the "**Transfer Application**") that it has submitted to the Department of Education to obtain a 100% public benefit conveyance of certain real property and improvements contained with the Sunflower Army Ammunition Plant located near DeSoto, Kansas ("**SFAAP**") and in return OEC has agreed to grant to DISTRICT the right to obtain a conveyance of property(ies) in the future (the "**Property Exchange Rights**") pursuant to the terms of the Real Estate Acquisition Agreement and of this Agreement; and

WHEREAS, the District's withdrawal of the Transfer Application, OEC's delivery of this Agreement to the District and the effectiveness of the Property Exchange Rights described in this Agreement and in the Real Estate Acquisition Agreement are conditioned upon the prior closing of the conveyance by the United States Government to the Kansas Statewide Projects Development Corporation ("**KSPDC**") of all or a portion of the SFAAP; and

WHEREAS, on the Final Closing Date, as defined in the Real Estate Acquisition Agreement, this Agreement shall be delivered to the District and the Property Exchange Rights described herein and in the Real Estate Acquisition Agreement shall accrue to the District according to the terms described herein.

NOW, THEREFORE, in consideration of the mutual promises exchanged by and between the Parties herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Incorporation of Recitals.** The recitals set forth above are hereby incorporated into and made a part of this Agreement.

2. **Agreement to Cooperate in Identification of School Sites.** The District, has notified the United States Department of Education and the General Services Administration of its public benefit needs for future school sites within the boundaries of the SFAAP. The District's actual need for school sites will be directly related to development of the SFAAP in a manner consistent with Johnson County's future land use master plan for the SFAAP. When residential development occurs within the SFAAP, the Parties acknowledge that the prior identification of sites for the development of schools is critical to the future patterns of development. However, actual development patterns are dependent on the marketplace, the location of utilities, including sanitary sewers, the location of arterial and major collector streets and other similar considerations. It is the intent of the Parties to cooperate on an on-going basis

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as the area starts to develop and the need for school sites in accordance with the criteria set out in Agreement can be established. Actual school sites will be conveyed as the need for the school sites is demonstrable under the terms of this Agreement. All school sites conveyed will be restricted for school purposes only. All final development and other plans and agreements must contain specific references to the rights of the District to acquire such sites on the terms and conditions of this Agreement and the Real Estate Acquisition Agreement to which it is attached as Exhibit A.

3. **Property Exchange Rights Binding on Transferees.** In general, the District must be assured that, if and when residential development occurs within portions (the “**Neighborhoods**”) of the boundaries of the SFAAP, sufficient land (the “**Sites**”) will be conveyed to the District for the development of school sites to serve residents of such Neighborhoods. All final development and other plans and agreements must contain specific references to the rights of the District to acquire such Sites on the terms and conditions of this Agreement and the Real Estate Acquisition Agreement to which it is an exhibit, including, without limitation:

(a) The District’s rights to acquire Sites shall be binding on the developers of any portion of the SFAAP and upon their successors and assigns, whether through voluntary or involuntary transfer reorganization or conveyance.

(b) The District’s rights to acquire Sites shall be binding upon any transferee of any portion of the SFAAP in the event that such transferee’s portion of the SFAAP is developed for residential purposes; provided that to effectuate this provision either all instruments of conveyance of any portion of the SFAAP shall contain specific references to the terms hereof or prior to the conveyance of any portion of the SFAAP to any nongovernmental agency, whether by the General Services Administration, the United States Army or KSPDC, a recordable instrument reasonably satisfactory to the District and referencing the District’s rights hereunder must be recorded against the entire SFAAP in the real estate records of Johnson County, Kansas.

4. **District Consent to Residential Development.** The District must approve (which approval shall not be unreasonably conditioned, delayed or withheld) any preliminary and final plans for residential development of any portion of the SFAAP before such plans can be implemented; provided that the District shall be deemed to be acting reasonably in withholding such consent unless and until the District has agreed to the location, configuration and time of conveyance to the District, of any Site which is necessary to serve the Neighborhoods provided for in such plans and unless and until such Site(s) meet the following criteria:

(a) Unless otherwise hereafter agreed by the District, contemporaneously with the issuance of the first building or other permit required for construction of any infrastructure or residences in a Neighborhood, each Site associated with such Neighborhood will be conveyed to the District, for no consideration other than entering into the Property Agreement, free and clear of any and all liens or assessments whatsoever;

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(b) Unless otherwise hereafter agreed by the District, for each separate Neighborhood (separate status being reasonably determined by whether a given residential area is contiguous to or is either of a materially different nature or type than, or is developed by a different developer than, contiguous residential areas) the District will receive, at a minimum, both a 120 acre Site and a separate 20 acre Site for development as schools and associated facilities; provided that, at a minimum, residential development in a Neighborhood is planned to, or thereafter actually, exceeds 4,000 residential units (whether houses, dwellings), and each time thereafter that a Neighborhood exceeds the next higher increment of 4,000 residential units, the District will have conveyed to it, at a minimum, an additional 120 acre Site and a separate 20 acre Site for development as schools and associated facilities.

(c) At no time will the District have fewer Sites than is required for the District to develop schools and associated facilities which, under the higher of current or then prevailing standards would, in the District's reasonable judgement, adequately house schools and associated facilities for the students actually or reasonably anticipated in the entire SFAAP and, to that end, if necessary Sites in addition to those provided for in Subparagraph (b) above will be conveyed to the District.

(d) Unless hereafter agreed by the District, all Sites shall meet the following criteria:

(i) Each Site shall be contiguous in a square or rectangular shape with a width and length of no less than 990' on a 20 acre Site and width and length no less than 2,000' on a 120 acre Site.

(ii) Each Site shall have a gentle, rolling topography with slopes not exceeding a 5% grade.

(iii) Each Site shall be located on the highest possible elevation that meets the above criteria within, or adjacent to, the Neighborhood with which it is associated.

(iv) To the extent possible, each Site conveyed to the District shall be conveyed by a method which legally describes the Site by quarter section, township and range.

(v) By the time of its conveyance to the District, at no cost to the District, each Site must be suitable for residential use and be completely free of any contamination by hazardous substances or wastes as defined in current and then applicable laws and regulations; provided that no Site shall have been determined to have had, from and after the date hereof, a prior, heavy contamination by hazardous substances or wastes.

5. **Notices.** Any notice or other communication to be given under this Agreement shall be in writing and may be given by hand delivery, or by United States certified or registered mail, by telegram or telex or by facsimile or overnight courier. Any notice shall be effective, if sent by mail, two days after deposit in the mail as aforesaid, if sent by telex, when sent and the



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appropriate answerback is received, and in all other cases when received. Notices shall be addressed as follows:

If to DISTRICT: De Soto Unified School District 232  
Education Center  
8305 Peoria Street  
Post Office Box 449  
De Soto, KS 66018-0449  
Attention: \_\_\_\_\_

If to OEC: The OZ Entertainment Company  
11845 Olympic Boulevard, Suite 695  
Los Angeles, California 90064

with a copy to: Polsinelli White Vardeman & Shalton  
Attn: Scott Young  
700 West 47<sup>th</sup> Street, Suite 1000  
Kansas City, Missouri 64112

6. **In General.**

(a) ***Governing Law.*** This Agreement shall be governed by, and construed in accordance with, the internal laws, and not the choice of laws, of the State of Kansas.

(b) ***Jurisdiction and Venue.*** This Agreement shall be enforced in the U.S. Federal District Court for the District of Kansas in the Johnson County, Kansas District Court.

(c) ***Entire Agreement.*** This Agreement, together with the Real Estate Acquisition Agreement, constitutes the entire agreement between the Parties governing the subject matter hereof, and supersedes any and all written and oral agreements previously agreed to covering the subject matter hereof. This Agreement may be amended only by a further written instrument signed by the Parties hereto. Neither this Agreement nor any Exhibits hereto shall create any rights of any third party and this Agreement may be amended by the Parties without liability to any third party.

(d) ***Section Headings.*** The paragraph titles are used herein for informational purposes only, and do not alter the substantive meaning of the terms of the paragraphs.

(e) ***Terms.*** The terms of this Agreement shall be liberally construed in order to accomplish the intent of the Parties and the spirit of the Agreement.

(f) ***Gender.*** Wherever necessary herein, the singular imparts the plural and vice versa, and the masculine, feminine and neuter expressions shall be interchangeable.

(g) ***Successors.*** This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties hereto.

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(h) ***Unenforceability.*** If any provision of this Agreement is deemed unenforceable, such provision shall be narrowed in scope in order to make it enforceable; and if such provision cannot be narrowed in scope to make it enforceable, it shall be stricken from this Agreement, but the remaining terms of this Agreement shall be enforced.

(i) ***Waiver.*** No waiver shall be binding upon a party unless signed by the party to be bound by the waiver and such waiver shall be narrowly construed rather than being construed as a continuous and ongoing waiver.

(j) ***Enforcement.*** Legal fees and court costs shall be awarded to the prevailing party in any action which enforces the terms of this Agreement.

(k) ***Timeliness.*** Time is of the essence of this Agreement.

(l) ***Counterparts.*** This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same document.

IN WITNESS WHEREOF, the Parties hereto have set their hands and seals as of the date first set forth above.

DE SOTO UNIFIED SCHOOL DISTRICT 232

By: \_\_\_\_\_  
Its: \_\_\_\_\_

THE OZ ENTERTAINMENT COMPANY

By: \_\_\_\_\_  
Robert B. Kory  
Chairman, Board of Directors/Chief Executive  
Officer

**EXHIBIT C**  
**DEED**

**EXHIBIT D**

**PROPERTY EXCHANGE RIGHTS**

**EXHIBIT E**

**DISTRICT RELEASE  
RELEASE OF RIGHTS**

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, including, but not limited to, the execution and performance of that certain Real Estate Acquisition Agreement dated \_\_\_\_\_, 2000, between DE SOTO UNIFIED SCHOOL DISTRICT 232, Johnson County, State of Kansas, a political subdivision of the State of Kansas ("**DISTRICT**"), the Kansas Development Finance Authority ("**KSPDC**") and The OZ Entertainment Company ("**OEC**") (the "**Agreement**"), the grant by OEC to DISTRICT of certain property exchange rights as defined in the Agreement (the "**Property Exchange Rights**") accompanied by other deliveries as provided in the Agreement as of the Closing Date set forth therein ("**Closing Date**"), which are prerequisite to the validity of this instrument, DISTRICT does hereby forever release, waive and discharge any and all rights DISTRICT has or ever obtained in and to the real property and improvements located at the Sunflower Army Ammunition Plant near De Soto, Kansas, in Johnson County ("**SFAAP**"), other than the Property Exchange Rights and any real property and improvements obtained pursuant to such rights, and agrees that, in withdrawing its application to the U.S. Department of Education pursuant to the Agreement, TRANSFEREE, for itself, and its successors and assigns, shall have no rights in and to the SFAAP, other than the Property Exchange Rights and any real property and improvements obtained pursuant to such rights, and any easements, appurtenances, rights or other hereditaments thereunto belong or in anywise appertaining and that all of its rights with respect to SFAAP are set forth in the Agreement and the transactions described therein.

IN WITNESS WHEREOF, DISTRICT has executed and delivered this Release of Rights as of the \_\_\_\_\_ day of \_\_\_\_\_, 2000.

DE SOTO UNIFIED SCHOOL DISTRICT 232

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT F**

**DISTRICT NOTIFICATION TO DOE**

**[DE SOTO UNIFIED SCHOOL DISTRICT 232 LETTERHEAD]**

\_\_\_\_\_, 2000

The Honorable \_\_\_\_\_  
Secretary  
Department of Education

\_\_\_\_\_  
Washington, D.C.

Attn: Mr./Ms. \_\_\_\_\_  
Department of \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: Withdrawal of Public Conveyance Application - Sunflower Army Ammunition  
Plant

Dear Mr./Ms. Secretary:

On behalf of De Soto Unified School District 232, Johnson County, State of Kansas (“**TRANSFEE**”), I am writing to and hereby withdraw the application submitted by TRANSFEE to the Department of Education and dated December 22, 1998, a true and correct copy of which is attached hereto, to acquire certain land and improvements located at the former military installation known as the Sunflower Army Ammunition Plant in Johnson County, Kansas.

Thank you for your cooperation.

Very truly yours,

DE SOTO UNIFIED SCHOOL DISTRICT 232

**Schedule 11(e)**

**Litigation**

**United Tribe of Shawnee Indians v. The United States of America**

**Schedule 11(f)**

**Consent Order**



## **Schedule 13**

### **Insurance**